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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R No.229 of 1999
Date of decision:3.11.2006

The Commissioner of Income Tax, (Central),Ludhiana

...Petitioner

Versus

Punjab Beverages (P) Ltd.

...Respondent

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.S.K.Garg Narwana, Advocate for the Revenue.

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JUDGMENT

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench,Chandigarh arising out of its order dated 4.6.1993 passed in I.T.A.No.1317/88, in respect of the assessment year 1982-83.

> "Whether, on the facts and in the circumstance of the case, the ITAT was right in law in holding that the bottles and shells of the assessee were a plant and entitles to depreciation at 100% under the provision to Section 32(I)(ii) of the Income-tax Act, 1961?"

The assessee is in the business of the soft drinks and claimed deduction under Section 32(1)(ii) of the Income Tax Act, 1961 towards depreciation treating empty bottles as plant for the purpose of said profession. The Assessing Officer disallowed the claim but C.I.T.(A) following the past history allowed depreciation at 100%. This view was affirmed by the Tribunal.

We have heard learned counsel for the Revenue and perused the findings recorded by the Tribunal.

The question whether bottles can be treated as plant having regard to the business of the assessee is not res-integra.

In **Commissioner of Income-Tax Vs.Jai Drinks (P.)**

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Ltd. (1988) 173 ITR, 100, the High Court of Rajasthan considered the question and following the law laid down by the Hon'ble Supreme Court in **C.I.T. Vs.Taj Mahal Hotel**, (1971) 82 ITR 44 and **Scientific Engineering House (P.) Ltd. Vs. CIT (1986) 157 ITR 86,** it was observed that plant must be understood to include any apparatus used for carrying on the business. The question to be examined should be whether particular article fulfilled the functions of a plant in the assessee's trade activity and whether it is a tool of his trade. It has held that bottles were tools of the trade of a company selling soft drinks.

In **Commissioner of Income Tax Vs. Srikrisha Bottlers P.Ltd., (1989) 175 ITR, 154,** Andhra Pradesh High Court took the same view, inter-alia, relying upon the judgment of the Rajasthan High Court in **Jai Drinks (P.) Ltd.'s** case(Supra).

Gujarat High Court also took the same view in **Commissioner of Income-Tax** Vs. **Saurashtra Bottling Pvt.Ltd., (1998) 232 ITR 270** following, inter-alia, the judgment of the Andhra Pradesh High Court in **Srikrisha Bottlers P.Ltd.'s** case supra.

The said view was also followed in **Joint Commissioner of Income-Tax** Vs. **Anatronics General Co.(P) Ltd., (2001) 247 ITR 25,** by the Delhi High Court.

Following the above, the question referred is answered in favour of the assessee and against the Revenue.

The reference is disposed of.

(Adarsh Kumar Goel)
Judge

November 3, 2006 **(Rajesh Bindal)**
Pka **Judge**